
HOUSE BILL No. 1155

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-21-1; IC 16-37-1; IC 23-14-67; IC 34-30-2-91.5.

Synopsis: Cemetery maintenance. Establishes the pioneer cemetery account within the cemetery and burial ground trust fund. Provides that if a fee is charged for a death certificate, an additional \$3 fee is imposed to be used by a county cemetery commission (commission) for maintenance of certain cemeteries. Requires a utility to have an approved development plan before disturbing ground within 100 feet of a burial ground. Allows a commission to maintain certain cemeteries established before 1900. Changes appointment requirements for commission members. Allows a commission to use certain tax revenue for township cemeteries. Requires a commission to file an annual report with the division of historic preservation and archeology. Requires township trustees to make an annual report to the commission. Allows the commission to accept donations and maintain pauper burial records. Adds commission duties. Provides that a private property owner who allows a person on the owner's land to access a cemetery is not liable, except for certain actions, for injuries to a person.

Effective: July 1, 2005.

Saunders

January 6, 2005, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1155

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-21-1-13.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13.5. (a) The division
3 may conduct a program to survey and register in a registry of Indiana
4 cemeteries and burial grounds that the division establishes and
5 maintains all cemeteries and burial grounds in each county in Indiana.
6 The division may conduct the program alone or by entering into an
7 agreement with one (1) or more of the following entities:
8 (1) The Indiana Historical Society established under IC 23-6-3.
9 (2) A historical society as defined in IC 20-5-17.5-1(a).
10 (3) The Historic Landmarks Foundation of Indiana.
11 (4) A professional archeologist or historian associated with a
12 college or university.
13 (5) A township trustee.
14 (6) Any other entity that the division selects.
15 (b) In conducting a program under subsection (a), the division may
16 receive gifts and grants under terms, obligations, and liabilities that the
17 director considers appropriate. The director shall use a gift or grant

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received under this subsection:

(1) to carry out subsection (a); and

(2) according to the terms of the gift or grant.

~~(c) At the request of the director, The auditor of state shall establish~~
~~a cemetery and burial ground trust fund is established~~ for purposes
of holding money received under subsection (b).

**(d) The pioneer cemetery account is established within the trust
fund from money received under IC 16-37-1-9 and IC 16-37-1-11.
Money in the account shall be distributed to county cemetery
commissions for the following purposes:**

(1) To maintain and repair cemeteries under IC 23-14-67.

**(2) To purchase land that contains a cemetery that will be
maintained by a county cemetery commission.**

**(3) To replace and repair grave markers located in cemeteries
under IC 23-14-67. However, any replacement or repair
conducted under this subdivision must be made in accordance
with guidelines established by the division.**

~~(d)~~ **(e)** The director shall administer ~~a~~ **the** trust fund established by
subsection (c). The expenses of administering the trust fund shall be
paid from money in the trust fund.

~~(e)~~ **(f)** The treasurer of state shall invest the money in the trust fund
established by subsection (c) that is not currently needed to meet the
obligations of the trust fund in the same manner as other public trust
funds may be invested. The treasurer of state shall deposit in the trust
fund the interest that accrues from the investment of the trust fund.

~~(f)~~ **(g)** Money in the trust fund at the end of a state fiscal year does
not revert to the state general fund. **Money in the pioneer cemetery
account at the end of a state fiscal year does not revert to the trust
fund.**

~~(g)~~ **(h)** Nothing in this section may be construed to authorize
violation of the confidentiality of information requirements of 16
U.S.C. 470(w) and 16 U.S.C. 470(h)(h).

~~(h)~~ **(i)** The division may record in each county recorder's office the
location of each cemetery and burial ground located in that county.

**(j) Money in the trust fund, including money in the pioneer
cemetery account, is annually appropriated to the division for
purposes of this section.**

SECTION 2. IC 14-21-1-26.5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26.5. (a)
Notwithstanding IC 23-14-44-1, this section does not apply to the
following:

~~(1) A public utility (as defined in IC 8-1-2-1(a)).~~

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~~(2)~~ (1) A corporation organized under IC 8-1-13.

~~(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).~~

~~(4)~~ (2) A surface coal mining and reclamation operation permitted under IC 14-34.

Except as provided in this subsection ~~subsection~~ and subsections (b), and subsection (c), and (d), a person may not disturb the ground within one hundred (100) feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

(1) must be approved if a person intends to construct a new structure or alter or repair an existing structure that would significantly impact the burial ground or cemetery; and

(2) is not required if a person intends to erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

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(3) A development plan of the state requires the approval of the department.

(d) A development plan for a public utility (as defined in IC 8-1-2-1(a)) or a municipally owned utility (as defined in IC 8-1-2-1(h)) to disturb ground within one hundred (100) feet of a burial ground or cemetery must be reviewed and approved by the Indiana utility regulatory commission.

~~(d)~~ **(e)** A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 3. IC 16-37-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) A local health department may make a charge under IC 16-20-1-27 for each certificate of birth, death, or stillbirth registration.

(b) If the local department of health makes a charge for a certificate of death under subsection (a), a ~~one dollar (\$1) coroners continuing education~~ **four dollar (\$4)** fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit: ~~any~~

(1) one dollar (\$1) of the fee for the coroners continuing education fees fund; and

(2) three dollars (\$3) of the fee for the pioneer cemetery account;

with the county auditor within thirty (30) days after collection. The county auditor shall transfer semiannually any coroners continuing education ~~fund~~ **fees** and **pioneer cemetery account fees** to the treasurer of state.

(c) Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit.

SECTION 4. IC 16-37-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) The state department shall charge and collect a fee of eight dollars (\$8) for each

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search of the records in the division of vital records. If the requested record is found, one (1) certification of the record will be issued without charge. Additional certifications of the same record will be issued at that time for an additional fee of four dollars (\$4) for each record.

(b) The state department shall charge and collect an additional fee of eight dollars (\$8) for any amendment to a record previously filed with the division of vital records.

(c) Verification without charge will be issued to an agency of local, state, or federal government upon written request by the agency.

(d) The state department shall charge and collect an additional fee of three dollars (\$3) for each certificate of death issued by the division of vital records. The state department shall transfer semiannually fees collected under this subsection to the treasurer of state to be deposited in the pioneer cemetery account.

SECTION 5. IC 23-14-67-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies to cemeteries that **were established before 1900 and:**

(1) are without funds or sources of funds for reasonable maintenance;

(2) have suffered neglect and deterioration; **or**

(3) may be the burial grounds for Indiana pioneer leaders or veterans of an American war, including the Revolutionary War. **and**

~~(4) were established before 1850.~~

SECTION 6. IC 23-14-67-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board of commissioners of a county may appoint a county cemetery commission consisting of **not less than** five (5) residents of the county. **One (1) member of the commission must be a township trustee. A township trustee appointed under this subsection may designate an individual to serve on the trustee's behalf.**

(b) The members of a county cemetery commission shall be appointed for a term of ~~five (5)~~ **four (4)** years. The board of county commissioners shall stagger the terms of the members to permit the appointment or a reappointment of **at least** one (1) commission member per year.

SECTION 7. IC 23-14-67-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A county cemetery commission may request the levy of an annual tax for the purpose of restoring and maintaining one (1) or more cemeteries described in section 1 of this chapter **or IC 23-14-68** that are located in the county.

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The tax may not exceed fifty cents (\$0.50) on each one hundred dollars (\$100) of assessed valuation of property in the county.

SECTION 8. IC 23-14-67-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. (a) Before March 1 of each year, a county cemetery commission shall file an annual report with the ~~Indiana historical bureau established by IC 4-23-7-3.~~ **division of historic preservation and archeology of the department of natural resources.**

(b) An annual report filed under this section must include information on the following:

- (1) The budget of the county cemetery commission for the preceding calendar year.
- (2) Expenditures made by the county cemetery commission during the preceding calendar year.
- (3) Activities of the county cemetery commission during the preceding calendar year.
- (4) Plans of the county cemetery commission for the calendar year during which the report is filed.

(c) The ~~Indiana historical bureau~~ **division of historic preservation and archeology of the department of natural resources** shall make reports filed under this section available for public inspection under IC 5-14-3.

SECTION 9. IC 23-14-67-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A county cemetery commission established under this chapter shall:

- (1) present an annual plan and budget; and
- (2) make an annual report;

to the board of county commissioners and the county council for approval.

(b) **Before March 1 of each year, each township trustee shall present an annual report to the county cemetery commission that includes the following information:**

- (1) **Records of the pauper burials.**
- (2) **Whether new burials are being allowed in a cemetery maintained by the trustee under IC 23-14-68.**
- (3) **A summary of all expenditures for cemetery restoration and maintenance, including to whom each expenditure was paid.**
- (4) **Recommendations for future funding needs.**

SECTION 10. IC 23-14-67-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A county cemetery

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commission may do the following:

(1) Accept for the county the donation of real property that complies with the following conditions:

(A) The real property contains a cemetery that is described under section 1 of this chapter.

(B) The county surveyor has completed a survey of the real property and has provided a copy of the survey to the county cemetery commission.

(C) The owner of the real property deeds the property to the county.

(2) Accept donations, apply for grants, and coordinate volunteers to restore and maintain cemeteries.

(3) Accept and maintain pauper burial records from township trustees.

(b) A county cemetery commission shall do the following:

(1) Assist township trustees with the restoration and maintenance of abandoned cemeteries under IC 23-14-68.

(2) Notify the county auditor and county recorder of the location of cemeteries within the county.

(3) Educate local officials and residents concerning the legal requirements regarding the care, protection, and preservation of cemeteries.

(4) Designate cemeteries within the county as active or inactive with regard to future burials.

SECTION 11. IC 23-14-67-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as provided in subsection (b), a private property owner who gratuitously allows a person on the owner's land to obtain access to or visit a cemetery is not liable for any injury to the person visiting or obtaining access to the cemetery.

(b) This section does not apply to the following:

(1) A property owner's willful, wanton, or intentional misconduct.

(2) A property owner's willful or malicious failure to warn of a dangerous condition.

SECTION 12. IC 34-30-2-91.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 91.5. IC 23-14-67-6 (Concerning a private property owner allowing access or a visit to a cemetery).

SECTION 13. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 23-14-67-2, as amended by this act, the term of a member of a

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- 1 county cemetery commission who was appointed to the member's
- 2 current term before July 1, 2001, expires on July 1, 2005.
- 3 (b) This SECTION expires July 1, 2006.

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